

REMARKS

Reconsideration of the subject application is requested. Claims 1-77 are pending in the application with claims 14-21, 23-37, 51-56 and 59-77 having been withdrawn. Claims 3, 10, 11, 45, 47 and 50 have been amended.

35 U.S.C. 112, second paragraph

Claims 3, 10-11, 45, 47 and 50 have been rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 was objected to for reciting the term "SSPE". Claim 3 has been amended to replace the abbreviation "SSPE" with the unabbreviated recitation of "standard saline phosphate EDTA buffer", which is commonly understood to those skilled in the art to be synonymous with SSPE. Accordingly, no new matter is presented by the present amendment. Claim 3 was also objected to for reciting the phrase "high stringency having a percentage mismatch" in item (b). Claim 3 has been amended to remove the ambiguous language.

Claim 10 was objected to for failing to recite the word "further" prior to the word "comprising". Claim 10 has been amended to recite the word "further". Claim 10 was also objected to for being unclear as to whether the phrase "selectable marker" is a marker for gene cloning. Claim 10 has been amended to replace "selectable marker" with "marker gene". This amendment does not change the scope of the claim, but more clearly defines the claimed subject matter. Basis for the amendment can be found, for example, in the specification at page 52, line 10.

Claim 11 was objected to for being indefinite for failing to identify whether the "nucleotide sequence encoding luciferase" is the marker sequence of claim 10. Claim 11 has been amended to recite "the plasmid of claim 10, wherein the marker gene comprises a nucleotide sequence encoding a luciferase." Basis for the amendment can be found, for example, in the specification at page 84, lines 16-19.

Claim 45 was objected to for being unclear as to whether the term "GFP" is "*Renilla reniformis* GFP". Claim 45 has been amended to recite "*Renilla reniformis* GFP" in

order to conform with the *Renilla reniformis* GFP recited in claim 38 from which claim 45 depends. Basis for the amendment can be found, for example, in the specification at page 11, lines 22-27.

Claim 47 was objected to for being unclear as to whether the term “fluorescent protein” referred to any fluorescent protein other than *Renilla reniformis* GFP. Claim 47 has been amended to recite “*Renilla reniformis* fluorescent protein” in order to conform with the *Renilla reniformis* fluorescent protein recited in claim 38 from which claim 47 depends. Basis for the amendment can be found, for example, in the specification at page 11, lines 8-15.

Claim 50 was objected to for lack of antecedent basis for the phrase “the cell of claim 9”. Claim 50 has been amended to recite “a cell comprising the plasmid of claim 9”.

It is submitted that amended claims 3, 10, 11, 45, 47 and 50 meet the requirements of 35 U.S.C. § 112, second paragraph.

Obviousness Type Double Patenting

Claims 1-13, 22, 38-50 and 57-58 have been rejected under the judicially created doctrine of the obviousness-type double patenting over claims 22-24, 27, 29-37 and 56-58 of U.S. Patent No. 6,232,107. Accompanying this Amendment is a Terminal Disclaimer over the 6,232,107 patent which overcomes this rejection.

Appl. No. 09/808,898
Amendment Dated March 15, 2005
Reply To Final Office Action Of December 15, 2004

All claims in the application are believed to be in allowable form. Allowance of the application is requested. In the event that any outstanding issues remain in the present application, the Examiner is invited to telephone Applicants' attorney to facilitate prosecution.

Respectfully submitted,



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